

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	MM Docket No. 00-69
FM Broadcast Stations.)	RM-9850
(Cheboygan, Rogers City, Bear Lake, Bellaire,)	RM-9945
Rapid River, Manistique, Ludington, Walhalla)	RM-9946
and Onaway, Michigan))	

**MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)**

Adopted: April 28, 2003**Released: April 30, 2003**

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a Petition for Reconsideration filed by Fort Bend Broadcasting Company ("Fort Bend") and a Petition for Reconsideration filed by Northern Radio of Michigan, Inc. ("Northern Michigan") both directed to the *Report and Order* in this proceeding.¹ Northern Radio Network Corporation, Lake Michigan Broadcasting, Inc. and Northern Michigan each filed an Opposition to Petition for Reconsideration. Fort Bend filed a Partial Opposition to Petition for Reconsideration directed to the Northern Michigan Petition for Reconsideration and a Reply to Oppositions to Petition for Reconsideration. Northern Michigan, Northern Radio and Fort Bend filed Supplements in response to a *Request for Supplemental Information*.² For the reasons discussed below, we deny the Fort Bend Petition for Reconsideration. We also grant the Northern Michigan Petition for Reconsideration to further explain the basis for denying the Fort Bend Counterproposal in this proceeding.

Background

2. The *Report and Order* in this proceeding allotted Channel 292A to Onaway, Michigan, as a first local service, and allotted Channel 249C3 to Cheboygan, Michigan, as a second local service. In doing so, the *Report and Order* denied a Counterproposal filed by D&B Broadcasting LLC, former licensee of Station WSRQ, proposing the substitution of Channel 260C1 for Channel 260A at Bear Lake, Michigan, reallocation of Channel 260C1 to Bellaire, Michigan, and modification of the Station WSRQ license to specify operation on Channel 260C1 at Bellaire.³ In order to replace the removal of the sole local service at Bear Lake, D&B Broadcasting proposed the allotment of Channel 291A to Bear Lake as a "backfill." D&B Broadcasting also proposed the allotment of Channel 259A to Rapid River, Michigan, and related channel substitutions at Manistique, Ludington and Walhalla, Michigan.

¹ 17 FCC Rcd 8799 (M. Bur. 2002).

² 17 FCC Rcd 20491 (M. Bur. 2002).

³ Fort Bend is now the licensee of Station WSRQ.

3. In the *Report and Order*, we determined that the proposed site for a Channel 291A allotment at Bear Lake was located in the Bar Lake Swamp and was unusable for a transmitter site, and thus, could not be used as a backfill allotment to justify the removal of Bear Lake's sole local service to Bellaire. In view of this determination, the *Report and Order* did not address the Northern Michigan allegation that a Channel 260C1 allotment at Bellaire would not be in compliance with Section 73.315 of the Rules due to a terrain obstruction between the proposed transmitter site and Bellaire. Both Northern Michigan and Fort Bend filed a Petition for Reconsideration directed to the *Report and Order*.

4. As stated above, the *Report and Order* determined that the proposed reference site for a Channel 291A allotment at Bear Lake was located in the Bar Lake Swamp and was unusable for a transmitter site. Because there was no backfill channel available at Bear Lake, we did not reallocate Channel 260C1 to Bellaire. In its Petition for Reconsideration, Northern Michigan argues that the stated justification for denying the allotment of Channel 291A at Bear Lake was in error and that we should state a separate and valid reason for denying the Channel 291A allotment at Bear Lake and reallocation of Channel 260C1 to Bellaire.⁴ In this regard, Northern Michigan reiterates its contention that a terrain obstruction between the proposed transmitter site and Bellaire precludes line-of-sight service to Bellaire. In support of this contention, Northern Michigan has included a study from an air space consultant to the effect that the Federal Aviation Administration ("FAA") would not approve a tower of sufficient height to provide line-of-sight service to Bellaire.

5. In its Petition for Reconsideration, Fort Bend states that the proposed site for the Channel 291A allotment at Bear Lake is located on dry land with available electrical service. Fort Bend also submitted an engineering exhibit demonstrating that at an antenna height of 299 meters above average terrain, its proposed reallocation of Channel 260C1 would provide line-of-sight coverage and a 70 dBu signal to Bellaire as required by Section 73.315(a) of the Rules. Finally, Fort Bend contends that we erroneously failed to consider its proposal for a Channel 259A allotment at Rapid River, Michigan.

Discussion

6. At the outset, we concur with both Northern Michigan and Fort Bend that the proposed site for a Channel 291A allotment at Bear Lake is a suitable transmitter site notwithstanding its proximity to the Bar Lake Swamp. Our review of this matter confirms that the proposed reference site is, in fact, located on dry land with electrical service. In light of this finding, we grant the Northern Michigan Petition for Reconsideration in so far as it pertains to this issue. Thus, we must determine whether a Channel 260C1 allotment at Bellaire would be in compliance with Section 73.315(a) of the Rules.

7. A tall tower is necessary to overcome a terrain obstruction between the proposed reference site for the Channel 260C1 allotment and Bellaire. To this end, it was necessary to make a dispositive determination as to the maximum tower height that would receive FAA approval. In response to the *Request for Supplemental Information*, Fort Bend, Northern Radio and Northern Michigan filed Supplements. In its Supplement, Northern Michigan submitted an engineering exhibit depicting the terrain profile along the radial between the Channel 260C1 reference site and Bellaire city center. According to this exhibit, an antenna height of 499 meters above average terrain would be required to provide line-of-sight coverage of Bellaire. In its Supplement, Fort Bend correctly notes that the

⁴ In their respective Petitions for Reconsideration, both parties refer to a footnote in *Honor, Bear Lake, Ludington, Walhala and Custer, Michigan*, 17 FCC Rcd 8794 (Med. Bur. 2002), in which we noted that a Channel 291A allotment at Bear Lake would, at a different transmitter site, provide a 70 dBu signal to Bear Lake as required by Section 73.315(a) of the Rules. Because that proceeding involved a different transmitter site, it does not establish error with respect to any determination in this proceeding.

Commission only requires a “reasonable assurance” that a suitable transmitter site will be available.⁵

8. We deny the Fort Bend Petition for Reconsideration. Fort Bend has failed to demonstrate that there is an available site at which a tower could be constructed which would enable a Channel 260C1 allotment to comply with Section 73.315(a) of the Rules and gain FAA approval. While we presume that a technically feasible site is available, that presumption is rebuttable.⁶ In this regard, Northern Michigan has submitted a Determination of Presumed Hazard from the FAA. Due to the proximity of the Charlevoix Municipal Airport, the FAA determined that any tower height 321 feet above ground (98 meters HAAT) would “result in a substantial adverse effect and would warrant a Determination of Hazard to Air Navigation.” This is well below the 299 meters above average terrain that would, according to Fort Bend and our own engineering study, enable the Channel 260C1 reallocation proposal to comply with Section 73.315(a) of the Rules. In view of the above, we cannot make a finding that there is reasonable assurance that a suitable transmitter site exists for a Channel 260C1 allotment at Bellaire.

9. Finally, there is no basis to consider the Fort Bend proposal for a Channel 259A allotment at Rapid River. The proposed Channel 259A allotment at Rapid River did not conflict with any proposal set forth in the original *Notice of Proposed Rule Making* in this proceeding.⁷ Instead, a Channel 259A allotment at Rapid River would have required favorable action on the proposed substitution of Channel 265A for Channel 260A at Manistique, Michigan, and modification of the outstanding construction permit for this allotment (File No. BPH-19970922ME). The Manistique substitution was necessary in order to accommodate the Channel 260C1 reallocation to Bellaire. In view of the fact that we are not reallocating Channel 260C1 to Bellaire, the Manistique substitution or the Rapid River proposal are outside the scope of this proceeding.

10. Accordingly, IT IS ORDERED, That the aforementioned Petition for Reconsideration filed by Fort Bend Broadcasting Company IS DENIED.

11. IT IS FURTHER ORDERED, That the aforementioned Petition for Reconsideration filed by Northern Radio of Michigan, Inc. IS GRANTED to the extent indicated above.

12. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

13. For further information concerning this proceeding, contact Robert Hayne, Media Bureau, (202) 418-2177.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

⁵ *Mount Wilson FM Broadcasters v. FCC*, 884 F.2d 1462 (D.C. Cir. 1989).

⁶ *Cusseta, Georgia*, 5 FCC Rcd 7437 (MM Bur. 1990); *San Clemente, California*, 3 FCC Rcd 6728 (MM Bur. 1988), *appeal dismissed sub. nom. Mount Wilson FM Broadcasters, Inc. v. FCC*, *supra*.

⁷ *Cheyboygan and Rogers City, Michigan*, 15 FCC Rcd 10292 (M.M. Bur. 2000).